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Media Release

Academic Says Harsher Sentences Don't Work and Then Argues for Harsher Sentences.

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Academic Mirko Bagaric's attack on the Victorian sentencing system (Herald Sun 14th March 2006) tries to pretend that Victoria is a paradise for criminals. Nothing could be further from the truth. Victoria is locking up more people for longer sentences than at any time in its history.

In spite of some useful Victorian Government initiatives to assist Aboriginal communities, the big picture is that harsher sentencing policies over the last 15 years have seen more Aborigines and other disadvantaged groups locked up than ever before.

Bagaric is well aware of this trend and in a "Canberra Times" article (20/12/2005) - "How We Punish Ourselves When We Hammer Crims", co-written with Richard Edney only three months ago, he argues against punitive sentencing .

In that article Bagaric draws attention to the 25% increase in people in prison in Australia over the last decade. The article says, "Sure it feels good to hammer prisoners but in the process we hammer ourselves." The Canberra Times article makes it clear that the rationales underlying the move to harsher penalties are community protection and a view that higher penalties reduce crime. "Given that these objectives are in most cases flawed we should be watering down the severity of punishment,." Bagaric and Edney say.

What has changed in three months that Bagaric now emphasizes more punitive sentencing. First, he uses an individual case as a basis for making sweeping statements- not a good academic practice. He attacks suspended sentences but fails to point out that if they were abolished up to 5000 more people would be jailed each year. He then recommends further tying judges hands in terms of sentencing, a move which treats judges as idiots and reduces the flexibility of the system.

The grid system Bagaric advocates is only one step removed from the complete strait jacket that mandatory sentencing creates. Surely we need a system which is able to take account of people who have a disability, a mental health issue, borderline IQ or substance problem when considering a sentence. We need a system which is able to take all the circumstances into consideration. Any compassion, flexibility or preference towards rehabilitation in sentencing is treated in this Bagaric article as weakness and is treated with contempt.

Abolishing suspended sentences and treating judges as robots is simply another way to move further down the path of harsher sentences, which is what we have been doing for more than a decade and has proven ineffective. Of course, judges sometimes get it wrong with their sentences and there are appeal processes to deal with that.

The rationale that is provided for harsher penalties for some offences by Bagaric is the harm done to the victim. Harm to the victim is already reflected in the sentencing range for different offences. That principle is already in place. Giving higher priority to the harm to the victim in sentencing is a principle that excludes consideration of the offender's circumstances and the possibility of rehabilitation. In other words, it is an approach which will lead to harsher sentences which in most cases doesn't work. By putting harm to the victim as an overriding principle Bagaric takes us backwards to the Old Testament philosophy of "an eye for an eye". In doing so he also contradicts his argument that harsher sentences are ineffective.

Has anyone ever asked victims groups who advocate harsher sentences whether they would like more money to be poured down a drain, eg, a longer sentence for an offender or instead would they instead like it spent on a worthy charity, rehabilitation programs or programs to reduce offending?

Bagaric is also depressed about the Victorian Government's proposed Charter of Rights and the emphasis it places on criminals. Once again, this claim ignores reality. The proposed Charter of Rights is a commitment to making laws that conform with The International Covenant on Civil and Political Rights (ICCPR). A Covenant already ratified by the then Liberal Commonwealth Government in 1980. If you want to assess the likely effect of such a Charter, look at the ACT. The ACT has had a similar Charter of Rights in place since 2004. There is no state of emergency, no revolution, no prisoner's paradise. In fact, ACT are only now building their first jail.

Bagaric recently achieved notoriety by advocating legalized torture. His recipe for 'rationality' in the sentencing system is a recipe for harsher penalties and inflexibility in sentencing something which he has rightly pointed out in previous media articles is counter-productive. Go to the bottom of the class Mr Bagaric.